STATE OF MICHIGAN

COURT OF APPEALS

PAMELA TODD, LISA HENDRICK, SANDFORD HADLEY, MARILYN DUNN, JAMIE WALKER, and MARINERS FIRST,

Plaintiffs-Appellants,

v

CITY COMMISSION OF MARINE CITY and MARINE CITY PLANNING COMMISSION,

Defendants-Appellees.

UNPUBLISHED
December 28, 2006

No. 261494
St. Clair Circuit Court
LC No. 04-001064-CZ

Before: Cooper, P.J., and Hoekstra and Smolenski, JJ.

PER CURIAM.

In this action seeking mandamus and declaratory or injunctive relief, plaintiffs appeal as of right from a judgment of no cause of action entered in favor of defendants City Commission of Marine City (the Commission) and the Marine City Planning Commission (MCPC) following a bench trial. We affirm.

After efforts to prevent the rezoning of certain property located in Marine City from I-1 light industrial to B-2 general business failed, plaintiffs filed the instant suit seeking to invalidate the zoning ordinance amendment effectuating the rezoning. In their complaint, plaintiffs alleged that the Commission failed to hold its decision on the rezoning until the MCPC had met the reporting requirements of § 584 of the City and Village Zoning Act (CVZA), MCL 125.581 *et seq*.[1] Plaintiffs further alleged that amendment of the ordinance to rezone the property from an industrial to a business classification failed to serve a legitimate public interest. Thus, plaintiffs requested that the trial court declare the ordinance amendment to be invalid and to enjoin or otherwise prevent its enforcement. Following a bench trial conducted on a stipulated record, the trial court found that defendants had complied with the requirements of the CVZA. Thus, the court concluded that the ordinance amendment rezoning the property was valid, and dismissed plaintiffs' complaint with prejudice.

[1] Although repealed by 2006 PA 110, the CVZA controls this case. See MCL 125.3702.

On appeal, plaintiffs argue that the trial court erred in finding the zoning ordinance amendment to be a valid exercise of the Commission's zoning power, compliant with the requirements of the CVZA. We disagree. A trial court's findings of fact in a bench trial are reviewed for clear error, but conclusions of law, such as whether defendant complied with statutory requirements, are reviewed de novo. *Cowles v Bank West*, 476 Mich 1, 13; 719 NW2d 94 (2006); *Chapdelaine v Sochocki*, 247 Mich App 167, 169; 635 NW2d 339 (2001). A finding is clearly erroneous where, after reviewing the entire record, this Court is left with a definite and firm conviction that a mistake has been made. *Walters v Snyder*, 239 Mich App 453, 456; 608 NW2d 97 (2000).

Plaintiffs stress in their brief on appeal that they do not challenge the amended ordinance as "constitutionally infirm," but rather only as statutorily invalid. Accordingly, we do not consider whether the rezoning at issue here serves a legitimate public interest or is an otherwise reasonable exercise of defendant's authority. See *Rogers v Allen Park*, 186 Mich App 33, 37; 463 NW2d 431 (1990) (discussing constitutional challenges to zoning). Rather, we address only the validity of the ordinance as compliant with the procedures for amendment of a city zoning ordinance set forth in MCL 125.584, which provides, in relevant part:

> (2) The legislative body of a city or village, unless otherwise provided by charter, may appoint a commission to recommend in the first instance the boundaries of districts and appropriate regulations to be enforced in the districts. If a city or village has a planning commission, that commission shall be appointed to perform the duties set forth in this section. The commission shall make a tentative report to the legislative body and hold at least 1 public hearing before submitting its final report to the legislative body. A summary of the comments submitted at the public hearing shall be transmitted with the report of the commission to the legislative body. The legislative body may hold additional public hearings if it considers it necessary or as may be required by charter.
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> (3) In a city or village having a commission appointed to recommend zoning requirements, the legislative body shall not in the first instance determine the boundaries of districts or impose regulations until after the final report of the commission. *In such a city or village, the legislative body shall not amend the ordinance or maps after they are adopted in the first instance until the proposed amendment has been submitted to the commission and it has held at least 1 hearing and made report thereon.* In either case, the legislative body may adopt the ordinance and maps, with or without amendments, after receipt of the commission's report, or refer the ordinance and maps again to the commission for further report. [Emphasis added.]

The stipulated record on which the trial court relied shows that, at its first regular meeting after receiving an application to rezone the property at issue, the MCPC set the matter for public hearing. At this meeting, the MCPC adopted the report of its planning consultant recommending the requested rezoning as more compatible with surrounding uses and zoning than the current designation. Based on this report, the MCPC voted to recommend to the Commission that it amend the Marine City zoning ordinance to rezone the property from I-1 light industrial to B-2 general business.

At its next regular meeting, the Commission voted to table the matter pending further consideration by the MCPC, which was directed by the Commission to take additional information from all interested parties and resubmit a recommendation to the Commission within sixty days. After receiving such information and taking additional comment from the public, the MCPC again voted to adopt the report and recommendation of its planning consultant that the property be rezoned. On the basis of this recommendation, the Commission adopted an amendment to the Marine City zoning ordinance rezoning the subject property from I-2 light industrial to B-2 general business.

Given the events shown by the stipulated record, we find no error, legal or factual, in the trial court's determination that the ordinance amendment at issue was properly enacted in compliance with the requirements of the CVZA and is thus valid and enforceable.[2] Cf. *Ann Arbor v Danish News Co*, 139 Mich App 218, 224; 361 NW2d 772 (1985) (an ordinance adopted in violation of the requirements of the CVZA is invalid). In reaching this conclusion, we reject plaintiffs' contention that the ordinance amendment must be invalidated because the MCPC failed to require studies regarding, or otherwise consider, the economic impact of the proposed use of the property and its affect on the public. Indeed, nothing in the statute governing the requirements for amendment of a city zoning ordinance, MCL 125.584(3), requires such study or consideration. Moreover, as recognized by several members of both the MCPC and the Commission, at issue before these bodies was only the rezoning of a property from I-1 light industrial to B-2 general business. Whether the proposed use is an advisable or otherwise appropriate use for that property after rezoning is a matter for further deliberation and decision controlled by statutes and other legal considerations not at issue in a request to rezone.

Further, we find unavailing plaintiffs' contention that the zoning change at issue is defective because the change has not been shown to serve a public, as opposed to private, interest. See *Raabe v City of Walker*, 383 Mich 165, 178; 174 NW2d 789 (1970) ("a zoning ordinance can be amended only to subserve the public interest") (Citation and internal quotation marks omitted). Even assuming that such a showing is required, the record in this matter shows that shortly before considering the rezoning request at issue, the MCPC approved a proposal to change to the city master plan to reclassify approximately six of the more than 26 acres of this particular parcel of property from I-1 light industrial to B-2 general business. Plaintiffs do not dispute the necessity of this initial rezoning decision, which is purported by defendants to have arisen from a need for additional property zoned for general business along Marine City Highway. In this context, then, the request by the owner, whose parcel would have been divided between I-1 and B-2 classifications by the original proposal, constituted only a decision regarding how much property should be rezoned to B-2, rather than a new determination whether

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[2] Contrary to plaintiffs' assertion, the prohibition against action by a city's legislative body prior to "public hearing" and "final report" by the "commission appointed to recommend zoning requirements," applies only to a determination of the boundaries of zoning districts "in the first instance." See MCL 125.584(2) and (3). Here, we do not deal with adoption of the Marine City zoning ordinance "in the first instance," but rather with the amendment of the city's zoning ordinance, the procedural requirements for which are governed solely by the requirements set forth in MCL 125.584(3).

a public need for additional B-2 zoning existed. Generally, the need had already been established without dispute. Under these particular circumstances, we find no merit to plaintiff's contentions that the rezoning of additional land required an independent determination that this was in the public interest.

Affirmed.

/s/ Jessica R. Cooper
/s/ Joel P. Hoekstra
/s/ Michael R. Smolenski